

REMARKS/ARGUMENTS

Responsive to the Office Action mailed October 13, 2006:

I. AMENDMENTS

A. Specification – No New Matter

The applicant has amended the specification in the “Summary of the Invention” to provide further clarity in the specification. The amendments made to the specification do not add new matter.

The applicant has made the amendments to clarify; and does not concede that the amendments were necessary to overcome the rejections under 35 U.S.C. §112 or prior art rejections. However, the use of frameless in the preamble or claims would be proper based on the definition discussed below.

1. Frameless – Proper And Consistent With Dictionary Definition

The Office Action asked “how the blind could be considered “frameless” when it includes foot sack support 20 and side supports 26.” To answer this question, the applicant refers to definition¹ of “frame” to understand “frameless” as used in the specification and claims:

“2. a rigid structure formed of relatively slender pieces, joined so as to surround sizable empty spaces or nonstructural panels, and generally used as a major support in building or engineering works, machinery, furniture, etc.”

Thus, the definition of “frameless” in the application means the lack of “a rigid structure formed of relatively slender pieces, joined so as to surround sizable empty spaces or nonstructural panels, and generally used as a major support in building or engineering works, machinery, furniture, etc.” This is a common usage of the term as shown by above (2nd definition in dictionary).

¹ The source of the definitions above with respect to “frameless” was downloaded from .Dictionary.com. Dictionary.com Unabridged (v 1.0.1), Based on the Random House Unabridged Dictionary, © Random House, Inc. 2006. <http://dictionary.reference.com/browse/frameless> (accessed: November 21, 2006). Attached hereto as Exhibit A is a print out

It should be clear that the applicant uses the term “frameless” as understood by the common definition (above) to refer to the “rigid structure.” The original specification supports applicant’s use of this definition as follows:

“There is a need for a portable, layout hunting blind that minimizes the supporting framework and provides an air-inflatable head and shoulder rest for the hunter. The blind should not have a rigid frame, and should therefore be usable whether or not the ground upon which it will rest is flat.” (emphasis added).²

Moreover, the applicant used “frameless” in the preamble of the claims, and that use has been amended (deleted) in the independent claims. To extent that there was any confusion, it would have been in the preamble. The removal from the preamble of frameless does not affect the claimed invention as the preamble does not breathe life into the claimed invention.

The use of “frameless” with floor is consistent with the specification, drawings, and claims. The floor does not have a frame, rigid or otherwise, and frameless is a proper characterization of the floor. What the invention has is a collapsible foot sack support 20 that does not function as a frame for the floor. The collapsible foot sack support functions to keep the foot sack opening clear for the hunter’s feet. See Figures 1, and 3-5. Thus, a “frameless floor” is appropriate in the claims.

As discussed above, and by looking also at prior art, such as U.S. Patent No. 6,698,131, (especially FIGS 3, 4, and 6), a frame is shown as structure surrounding (or framing) the floor. This is the proper context. The term “frameless” is properly used and understood in the application by a person in the field.

2. New Paragraph, Not New Matter, Supported by FIG 5 and Specification Language

The applicant has added the following paragraph under the Detailed Description Of The Preferred Embodiment:

‘In FIG. 5, the phantom lines of the foot sack support show the foot sack support in the down position, lying on the floor, and in the up position that keeps the foot sack opening clear for the hunter’s feet.’

² This support is located in the original specification at page 2, lines 24-27.

This new paragraph is based on the depiction shown in FIG. 5 as well as the preceding paragraphs that discuss the positions of the foot sack support in phantom and solid showing the pivoting of the foot sack support.

B. Claims

Independent claims 1,7, and 12 have been amended in the preamble of each claim as follows:

A frameless, portable, layout flexible hunting blind with minimal supporting framework adapted to enclose a sitting or reclining hunter, the hunting blind comprising:

These amendments to the claims do not add new matter, and are supported as discussed above in the preceding section on amendments to the specification. Indeed, the body of each of these independent claims have not been amended – only the preamble.

II. OBJECTIONS TO THE DRAWINGS ARE TRAVERSED

The Applicant respectfully disagrees with the Office Action's assertion that the foot sack support attached to the foot sack opening is not shown. The foot sack opening (16) and collapsible foot sack support (20) are identified in the original drawings. In particular, the applicant directs your attention to the following drawings:

FIG. 1 with the foot sack opening shown as 16, and a collapsible foot sack support in shown in phantom as 20;

FIG. 3 shows a collapsible foot sack support in shown in phantom as 20;

FIG. 5 shows a collapsible foot sack support 20 having part 20a, a substantially horizontal first bar, a vertical second bar 20b, and a substantially horizontal foot 20c.;

In addition to the drawings, pages 4 -5 of the patent application , an embodiment of the collapsible foot sack support is described as shown in FIG. 5 as having part 20a, a substantially horizontal first bar, a vertical second bar 20b, and a substantially horizontal foot 20c. This embodiment is likewise shown in phantom in FIGs 1 and 3.

The applicant respectfully requests the objection to the drawings be withdrawn in light of the above remarks, and thus traverses this objection.

III. REJECTIONS UNDER 35 U.S.C. §112

A. Office Action Must Establish a *Prima Facie* Case of Lack of Written Description, 35 U.S. C. §112, First Paragraph, and that the Claims are Indefinite, 35 U.S. C. §112, Second Paragraph

The applicant respectfully submits that the Office Action has not presented a *prima facie* case under 35 U.S. C. §112, First Paragraph, and 35 U.S. C. §112, Second Paragraph. The applicant has, nevertheless, identified the reasons and support for finding that the application meets the requirements of written description and definiteness under 35 U.S. C. §112.

1. Written Description Rejection – Burden On Examiner

The CCPA has stated that the description of the invention requirement is “relatively simple to comply with and thus will ordinarily demand minimal concern on the part of the Patent Office. *In re Moore*, 169 USPQ 236, 238 (C.C.P.A. 1971). Moreover, the Board has stated: “the Examiner has the initial burden of presenting evidence or reasons why persons skilled in the art would not recognize in [the] specification disclosure a description of the invention defined by the claims. *Ex parte Sorenson*, 169 USPQ 1462,1463 (B.P.A.I. 1987).

2. Indefiniteness Rejection – Burden On Examiner

The examiner has the burden of providing a *prima facie* case to support a rejection of indefiniteness. The CCPA has also stated that: claims which on first reading – in a vacuum, if you will – appear indefinite may upon a reading of the specification disclosure or prior art teachings become quite definite.” *In re Moore*, 169 USPQ 236, 238 n.2 (C.C.P.A. 1971).

3. Applicant Traverses Both Rejections Under 35 U.S.C. §112

The crux of both rejections, albeit a first and a second paragraph rejection under 35 U.S.C. §112, is that:

- a) the written description of subject matter does not describe “how the collapsible foot sack support attaches to the foot sack opening . . . support is positioned within the opening. Not attached hereto . . . It is unclear how it is attached and further how it pivots if attached ” (first paragraph rejection); and

b) the Examiner “understood that foot sack support is positioned within the foot sack opening not attached thereto. It is unclear how it is attached and further how it pivots if attached.” (second paragraph rejection).

a. Applicant Traverses Written Description Rejection

The applicant has described in the application that the collapsible foot sack support 20 [is] attached to the foot sack opening, application page 4, lines 4-6; *see also*, application page 4, lines 8-12; *see also*, original claims of the application. Figures 1, 3-5 show the position of the collapsible foot sack support at the foot sack opening. The applicant has support in the specification, and as shown in FIG. 5 for example, that the collapsible foot sack support does “pivots about the foot sack opening.” Thus, the applicant has complied with the written description in the application as the evidence is supported by specification, drawings, and claims.

The Office Action argues that the foot sack support is positioned within the foot sack opening **not attached thereto. . . .** (emphasis added). The Office Action states that it is unclear as to attachment and pivoting of the foot sack support for both rejections. The applicant submits that the Office Action does not support an interpretation of “positioned,” and contradicts the evidence identified above. The evidence shows that attachment, not mere positioning, and pivoting are supported and claimed by the applicant.

Hence, the 35 U.S. C. §112, First Paragraph should be withdrawn.

b. Applicant Traverses Indefiniteness Rejection

With respect to indefiniteness, the Office Action argues that ““[the] foot sack support is positioned within the foot sack opening not attached thereto. It is unclear how it is attached and further how it pivots if attached.” As discussed above, there is adequate support for overcoming the written description rejection and the indefiniteness rejection. The premise of this rejection is that the same as above under written description – the claims are indefinite because of attachment and pivoting of the foot sack support is unclear.

As shown above, this is not the case. The claims and application show that the collapsible foot sack support 20 attaches to and keeps the foot sack opening clear for the hunter’s feet. The collapsible foot sack support pivots into position and out of position as shown in Fig. 5.

While the applicant stands on its position that the claims are definite, the applicant has amended the specification, based on the information shown in FIG 5. In FIG. 5, the phantom lines of the foot sack support show the foot sack support in the down position, lying on the floor, and in the up position that keeps the foot sack opening clear for the hunter's feet. This is not new matter, and the "up (or support) position" is also shown in Figs. 1,3-5. This should add greater clarity, and remove any doubt.

Hence, the 35 U.S. C. §112, second paragraph should be withdrawn, as the claims are not indefinite based on the foregoing sections.

c. Applicant Traverses Any Tacit Lack of Enablement

It appears that the Office Action is tacitly making a lack of enablement rejection as the above two rejections under 35 U.S. C. §112 are not supported. As discussed above, the applicant has provided adequate clarity as to what it views and claims as its invention, and it is not indefinite. Moreover, the written description, including the drawings, specification, and claims does show that the applicant was in possession of the invention at the time of the filing of the application.

To the extent that the Office Action is tacitly claiming that the application is not enabled, the examiner bears the burden of showing the application is nonenabling.³ That has not been done in the Office Action. Moreover the CCPA has stated that: "[n]ot every last detail is to be described, else patent specifications would be turned into production specifications, which they were never intended to be."⁴

Moreover, if a person of skill in art would understand how to make or use the invention, then there is enablement.⁵ Applicant asserts that a person of skill in the art would understand "how it is attached and further how it pivots if attached" (discussed as support for rejections in Office Action) based on the specification, drawings, and claims. Looking at the disclosure, a person of skill in the art would realize that the collapsible foot sack support 20 needs to attach to the foot sack opening and pivot. It is a relatively simple process to attach and pivot collapsible foot sack support 20. For example, a hook and loop structure could

³ *In re Wright*, 27 U.S.P.Q. 2d 1510, 1513 (Fed. Cir. 1993).

⁴ *In re Gay*, 135 USPQ 311, 316 (C.C.P.A. 1962)

⁵ *General Elec. Co. v. Brenner*, 159 USPQ 335, 337 (D.C. Cir. 1968)(citing *Loom Co. v. Higgins*, 105 U.S. (15 Otto) 580 (1882)).

attach and allow pivoting of the collapsible foot sack support 20 and/or a sewing the substantially horizontal first bar as an attachment that also permits pivoting shown in the application, especially, FIG. 5. Moreover, a hook and loop structure was mentioned in the application on page 4 as to another structure. Thus, a person would be able to make and use the invention without undue experimentation.

Thus, the applicant respectfully requests withdrawal of the above rejections.

IV. PRIOR ART MATTERS

A. The Office Action Rejected Claims 1-4 And 7-9 Under 35 USC 103(A) As Being Unpatentable Over Figler In View Of Mason. Applicant Respectfully Traverses The Rejection.

The Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness.⁶ If the Examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of non-obviousness.⁷

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure.⁸

B. Incorporates Amendment & Response to First Office Action

The applicant respectfully traverses the § 103 rejection because the office action has not established a *prima facie* case of obviousness. The Applicant incorporates by reference herein, the response to the First Office Action, and asks the Examiner to reconsider the art as being non-analogous, and not adequate upon which to base a 103 rejection.

⁶MPEP Sec. 2142.

⁷ Id.

⁸Id. (emphasis supplied)

C. Additional Evidence That Obviates the 103 Rejections

The references of record cited against the applicant's invention do not teach or suggest all the claim limitations.

1. *Figler* Reference

The First Office Action, page 2, conceded that *Figler* does not teach

"a collapsible foot sack support attached to the foot sack opening and adapted to keep the foot sack opening clear of the hunter's legs."

2. *Mason* Reference Does Not Have Feature of Applicant's Invention And Teaches Away from the Invention – No *Prima Facie* Case

The Office Action used *Mason*, which is non-analogous art, to provide such a teaching. A hunting blind and a bed are not analogous. The applicant's position of non-analogous art is discussed in the response to the First Office Action, and not repeated herein. In addition, *Mason* does not teach "a collapsible foot sack support attached to the foot sack opening and adapted to keep the foot sack opening clear of the hunter's legs" which is a limitation present in all the independent claims.

A person looking at *Mason* would see a rigid frame that attaches to opposite sides of a bed and uses a clip structure for securing the frame assembly to an underlying mattress. There is no support in *Mason* nor in any other reference of record showing a collapsible foot sack support that attaches and pivots as claimed in the invention. Indeed, a review of *Mason* shows that it is not a portable pivotal structure that would work in a lay down style hunting blind.

The applicant stated in the original application that "the blind should not have a rigid frame." *Mason* cannot be considered anything but a rigid frame. This rigid frame in *Mason* is not collapsible, and is attached to a bed assembly.

Mason discloses "an elongated framework for mounting to opposite sides of a bed assembly." *Mason* discloses and claims the "elongate framework [is] arranged for mounting to opposite sides of a bed assembly" with a "Clip structure arranged for securement of the frame assembly to an underlying mattress permitting positioning and spacing of a cover structure of a bed in a space arrangement relative to the underlying mattress." No where in *Mason* is there any support for the frame to be collapsible.

The Examiner improperly relies on the applicant's disclosure to argue that it would have been obvious to modify *Mason*. There is no objective evidence supporting that position. This is improper hindsight using the applicant's invention. The Examiner has not pointed to any motivation, teaching, or suggestion to take the structure in *Mason* (a bed assembly – a bed already has a frame) combine with *Figler*, and arrive with all of the features/limitations of the invention. This is not a prima facie case.

Independent claims 1, 7, and 12 (all) contain the following feature:

"(d) a collapsible foot sack support attached to the foot sack opening and adapted to keep the foot sack opening clear of the hunter's legs."

As this limitation is not in any of the references of record, the independent claims and all claims depending from them, 2-6, 8-11, and 13-18 are in condition for allowance . Claims 1-18 should be allowed for all of reasons (above).

For the above reasons, Applicant respectfully requests the allowance of all claims and the issuance of a Notice of Allowance.

Respectfully submitted,

Dated: 1 Dec 06

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